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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,562	08/26/2003	Tyler Lowrey	2024.43	5941
7590	01/27/2004		EXAMINER TSAI, H JEY	
Philip H. Schlazer Energy Conversion Devices, Inc. 2956 Waterview Drive Rochester Hills, MI 48309			ART UNIT	PAPER NUMBER
			2812	

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/649,562	LOWREY ET AL.	
	Examiner	Art Unit	
	H.Jey Tsai	2812	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

*Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,617,192. Although the conflicting claims are not identical, they are not patentably distinct from each other because both first material and contact material are conductive material.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolstenholme et al. 6,236,059 in view of Gonzalez et al. 2002/0020835 and Gonzalez et al. 6,369,431.

The reference(s) teach the features :

Wolstenholme et al. discloses a method of forming programmable memory element, comprising the steps of:

providing a first material 120 of polysilicon, fig. 18-19 and col. 9, lines 6+,  
removing portion of first material 120,  
replacing at least a portion of removed first material 120 with a second material 185 of TiN or silicon nitride 190,  
introducing a programmable resistance material (200, a chalcogenide element, col. 9, lines 35+) proximate to the second material 185 and distant from said first material 120,  
chalcogenide material is a phase (logic state) change and programmable resistance change material, col. 1, lines 25+.

The difference between the reference(s) and the claims are as follows: Wolstenholme et al. does not teach that titanium nitride metal layer 185 having resistivity which different from the resistivity the removed first material 120 of polysilicon layer and changing resistivity by ion implantation. However, it is well known in art that metal layer having a lower resistivity than the polysilicon layer such as taught by Gonzalez et al. '835 at last two lines of para. 30, polysilicon layer has a higher resistance than titanium nitride 17. And, it is also known that silicon nitride layer 190 is an insulator, hence, the resistivity of silicon nitride 190 is much higher than the conductive polysilicon layer 120.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have recognized that first polysilicon material having a different resistivity than the second material of titanium nitride as suggested by Gonzalez et al. and silicon nitride layer having a higher resistivity than conductive polysilicon layer.

Gonzalez et al. '431 teaches at figures 4+ and col. 4, lines 65+ that replacing first material 20 with ion implantation to form a second material 25, then forming a programmable material of chalcogen element 50.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the primary reference with ion implantation doping to change the resistivity of the material as suggested by Gonzalez et al. '431 because the ion concentration in the polysilicon layer change resistance of polysilicon layer.

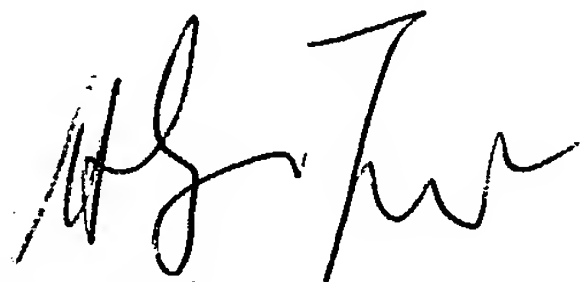
**Any inquiry of a general nature or clerical matters or relating to the status of this application or proceeding should be directed to the Group customer service whose telephone number is (703) 306-3329 and Fax number (703) 872-9306. Group receptionist telephone number 703-308-0956.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. Jey Tsai whose telephone number is (703) 308-1374. The examiner can normally be reached on from 7:00 Am to 4:00 Pm., Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Niebling can be reached on (703) 308-3325. The fax phone number for this Group is (703) 872-9306.

hjt

1/13/04



H. Jey Tsai  
Primary Examiner  
Patent Examining Group 2800